or by an agent acting within the scope of his authority,[5] are admissible to establish facts against the principal. But these decisions were for the most part rendered in cases where the agreement of the principal as to the same matter would not only be admissible, but would be much stronger evidence to establish the same fact. Under the code and the decisions in California, it seems clear that the agreement of the parties expressing the value of the property to be sold is no evidence that the consideration there determined on is fair or adequate. The principal case seems to hold, however, that admissions by the parties or their agents, as to the same matter, are admissible evidence even though the contract itself would not be competent.

M. B. K.

Statutes and Statutory Construction: Effect of Amendment: Sec. 325 Pol. Code (Cal.).—In a recent case,[1] the District Court of Appeal for the Third District, apparently accepts as law the proposition, quoted from argument of counsel, and supported by a citation,[2] that "It is well settled that a revised or amended act must be construed as a new and original piece of legislation." The language was pure obiter dictum and was entirely unnecessary to the decision, but, in view of the fact that such dicta sometimes cause confusion in subsequent cases, it is deemed worthy of comment. Not only does the citation of the earlier case given in support of this dictum fail to support it, but the proposition itself is plainly covered by the express provisions of Section 325 of the Political Code, which says. "Where a section or part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form; but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment." This section has frequently been cited and followed by the courts of California.[3] An identical provision in the Montana law has been interpreted to mean that the unamended part of the statute does not repeal conflicting laws, as being later in point of time.[4] A similar decision has been reached in

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83 Pac. 158 (Cal. App., 1905); Neely v. Naglee, 25 Cal. 152 (1863); Ward v. Preston, 23 Cal. 468 (1863).

[5] Wright v. Carrillo, 22 Cal. 595 (1863); Robinson v. Dougan, 35 Pac. 902 (Cal. Sup., 1894); Burlingame v. Rowland, 77 Cal. 315; 19 Pac. 526 (1888); White v. Merrill, 82 Cal. 17; 22 Pac. 1129 (1889); Roche v. Llewellyn Iron Works, 140 Cal. 563; 74 Pac. 147 (1903); 16 Cyc. 939.

[1] Reed Orchard Co. v. Superior Court, 15 Cal. App. Dec., 247; decided September 7, 1912.

[2] Donlon v. Jewett, 88 Cal. 530; 26 Pac. 370 (1891).

[3] Estate of Martin, 153 Cal. 229; 94 Pac. 1053 (1908); City of Los Angeles v. Lelande, 11 Cal. App. 307; 104 Pac. 717 (1909).

[4] State ex rel Hay v. Hindson, 40 Mont. 353; 106 Pac. 362 (1909).

Oregon.[5] Certain cases in other jurisdictions, apparently in conflict with this note, are believed to be based on rules of construction differing from that expressed in the code section.[6] Apparently the general rule is, however, very similar to that enunciated by the California legislature and courts.[7] But whatever the rule in other jurisdictions, the California law seems to be plainly opposed to the dictum in the principal case.

A. B. S., Jr.

Surety: Modifications in Principal Contract Not Discharging Surety.[1]—In an action by owners against a surety of a building-contractor, it was held that none of the following matters constituted a defense:

1. The payment of the amount of one installment specified in the contract to sub-contractors, material men and laborers instead of to the contractor personally, the payment having been made on the contractor's "O. K.-ing" each of the claims and giving his receipt to the owners for the installment.

2. The fact that the building as constructed was 121 feet, 7 inches in depth, instead of 120 feet as shown by the plans, where the difference was due solely to a mistake of those engaged in the work, without knowledge on the part of the owner, especially in view of the fact that the building contract provided for alterations, deviations, additions and omissions on the request of the owner without avoiding the contract.

3. Changes aggregating $130 on a $16,000 contract, although there was no agreement as to the valuation therefor prior to their execution. The contract provided: "Upon the demand of either the contractor, owner or architect, the character and valuation of any or all changes, improvements or extra work shall be agreed upon and fixed in writing signed by the owner or architect and the contractor prior to execution." The court said as to this: "It may be conceded that material changes in the plans and specifications not expressly authorized by the contract, or material changes authorized by the contract made by the parties without following a particular method prescribed therefor by the contract, and made without the knowledge or consent of the surely, would operate to discharge the surety on the bond of the contractor." But here the provision for valuation, etc., was applicable

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[5] Zelig v. Blue Point Oyster Co., 54 Ore. 543; 104 Pac. 193 (1909).

[6] Cortesy v. Territory, 7 N. M. 89; 32 Pac. 504 (1893); Dimpfel v. Beam, 41 Colo. 25; 91 Pac. 1107 (1907).

[7] Sutherland on Statutory Construction, 133-134; McGuire v. C. B. & Q. R. R. Co., 131 Ia. 340; 108 N. W. 902 (1906); McKibben v. Lester, 9 Ohio St. 628 (1859); Black on Interpretation of Laws, 357; followed in Stonega Co. v. Southern Co., 123 Tenn. 428; 131 S. W. 988 (1910), and Stiers v. Mundy, 174 Ind. 651; 92 N. E. 374 (1910).

[1] Wolf v. Aetna Indemnity Co., 44 Cal. Dec. 299; 126 Pac. 470 (Aug-19, 1912).